

ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

3770.13

6/15/90

SUBJ: PROCESSING DISCIPLINARY/ADVERSE ACTIONS UNDER THE NATCA/FAA AGREEMENT

1. PURPOSE. This order provides guidance and procedures for the processing of disciplinary/adverse actions under the 1989 agreement with the National Air Traffic Controllers Association (NATCA). It covers removals or reductions in grade for reasons other than unacceptable performance, reductions in pay, written warnings, written reprimands, suspensions, and furloughs of 30 days or less.

2. POLICY. It is the policy of the FAA that discipline is one of several management tools that supervisors can use to encourage employees to establish and maintain exemplary standards of work performance and conduct. Disciplinary action should be corrective in nature, and to the extent that the circumstances permit, should be imposed in a progressive manner. Normally, supervisors should consider whether the problem can be resolved through such corrective action as closer supervision, admonition or oral reprimand, prior to initiating formal disciplinary action (i.e., a letter of reprimand, suspension, demotion, or removal). In those cases where corrective action is necessary, the measures taken should have a constructive effect while maintaining discipline and morale among other employees.

FAA Order 3750.4A, Conduct and Discipline, contains as Appendix 1, a Table of Penalties for Various Offenses which is the guide in determining the appropriate penalty for a given disciplinary infraction. This table is not intended to cover every possible type of offense. If after investigation of the facts, a determination is made that a penalty is appropriate, a penalty either more or less severe than the minimum or maximum range may be imposed based upon sound considerations. Thought should be given to the gravity of the offense, frequency of violations, position of the employee, past record, and extenuating

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Initiated By: ALR-100

circumstances offered by the employee. In determining what action should be taken, it should be established whether the employee knew, or could reasonably be expected to know, what standard of conduct was expected of him/her. In developing the Table of Penalties consideration has been given to the fact that suspensions represent a loss of productivity to the FAA, a financial loss to the employee, and are therefore used when the gravity of the offense warrants such action. To ensure consistency of application of this Appendix, supervisors are required to identify the factor(s) used when deviating from this guidance. Supervisors should consult the appropriate regional Human Resource Management Division staff for guidance in initiating disciplinary or adverse actions and determining the appropriate penalty to be imposed.

It is the supervisor's responsibility to keep employees informed of the appropriate standards of conduct and performance which are expected, along with the consequences of the employee's actions when a violation occurs. Supervisors must provide positive leadership and be a positive example to the employees serving under their supervision and to instill in their subordinates a sense of loyalty, teamwork and responsibility. In addition, supervisors should treat all employees under their supervision in a fair and equitable manner, shall avoid discrimination, and conduct their operations in a manner which will show proper regard for the dignity of their subordinates.

3. DISTRIBUTION. This order is distributed to Air Traffic Branch managers and above in the Washington Headquarters and regions; to human resource management divisions in the regions to branch level; to all supervisors and all employees in terminal and enroute facilities.

4. BACKGROUND. The labor agreement with NATCA, effective May 1, 1989, contains the following pertinent provisions.

- a. Article 9 contains the grievance procedure.

b. Article 10, Section 1, states:

"This Article covers actions involving written warnings, written reprimands, suspensions, removals, reductions-in-grade or pay, or furloughs of thirty (30) days or less. The removal of probationers is an exception to this Article and shall be governed by Federal Personnel Manual Chapter 315, Subchapter 8-4."

c. Article 10, Section 2, states:

"Adverse actions may not be taken against an employee except for such cause as will promote the efficiency of the service. Adverse actions under this Article must be supported by a preponderance of the evidence and warranted by just cause. Adverse actions must be determined on the merits of each individual case."

d. Article 10, Section 3, states:

"All facts pertaining to a disciplinary/adverse action will be developed as promptly as possible. Actions under this Article shall be promptly initiated after all the facts have been made known to the official responsible for taking action."

e. Article 10, Section 4, states:

"Management's action may not be sustained if a harmful error is shown. Adverse actions shall be governed by Title 5 U.S.C., Chapter 75 and by regulations of the OPM."

f. Article 10, Section 5, states:

"An employee against whom an adverse action is proposed which falls under the jurisdiction of the Merit Systems Protection Board may appeal that action to the Merit Systems Protection Board or grieve under Article 9 of this Agreement, but not both."

g. Article 10, Section 6, states:

"An employee against whom action is proposed under this Article shall have the right to review all of the information relied upon to support the action and shall be given a copy upon request."

h. Article 10, Section 7, states:

"The employee and his/her representative shall be granted a reasonable amount of official time of up to sixteen (16) hours, if otherwise in a duty status, in cases involving removal, reduction in grade or pay, furloughs of thirty (30) days or less, or suspensions of more than fourteen (14) days; of up to eight (8) hours in other cases for preparation and presentation of answers to proposed actions under this Article. The official time authorized in this Section may be extended upon request."

i. Article 10, Section 10, states:

"Administrative reassignments or transfers to other facilities or locations, retraining and recertification shall not be used as disciplinary actions."

5. FORM. Use of FAA Form 3770-2, Grievance Record is the preferred method for filing grievances. It is available through normal distribution channels. The NSN is 0052-837-2000; units of issue is set.

6. COORDINATION. The procedures in this Order were negotiated with the National Air Traffic Controllers Association (NATCA).

7. EXCLUSIVE GRIEVANCE PROCEDURE. Grievances involving written warnings, written reprimands, and suspensions of 14 days or less must be processed under the provisions of the grievance procedure contained in Article 9 of the NATCA/FAA agreement. Appeals or grievances involving other types of disciplinary actions covered by this order (removals or reductions in grade for reasons other than unacceptable performance, reductions in pay, suspensions of more than 14 days, furloughs of 30 days or less) may be processed either as appeals to the Merit Systems Protection Board, or as grievances under the NATCA/FAA agreement, but not both.

8. DETERMINING CORRECTIVE ACTION TO BE TAKEN. Supervisors and management officials are responsible for determining if corrective disciplinary action is warranted. The type and severity of the action will be decided by the lowest level official over the employee who has authority to effect the action. Whether the action decided upon is formal or informal, the following principles shall be observed in the exercise of this discretion.

9. INFORMAL DISCIPLINARY MEASURES. When a supervisor decides that corrective action is necessary, he/she should first consider informal measures which are non-punitive in nature but which will instruct offending employees and remedy problem situations. Typically, these actions are applied by the supervisors on their own initiative and in situations where a relatively minor offense has occurred. The following suggested procedures are by no means the only informal corrective measures that can be employed. Supervisors should review the background of individual cases and assure that these informal measures are considered before formal corrective actions, which are recorded in an employee's official personnel file, are utilized.

a. Closer Supervision. At times the correction of possible or actual employee misconduct requires nothing more than closer supervision. Such corrective action is particularly effective when the employee's work performance is inadequate. Generally, the employee should be informed of the reason for the closer supervision and encouraged to participate in the corrective process.

b. Oral Reprimands. Perhaps the most common of corrective actions is the face-to-face session between the employee and supervisor. To be most effective, such discussions should be conducted in private without undue embarrassment to the employee. The interview should be informal and relaxed.

The employee should be advised of the specific infraction or breach of conduct and encouraged to explain his/her side of the controversy or offer any comment he wishes to make. After listening to the employee, the supervisor must decide if he should continue with the reprimand.

c. Written Warnings. If a supervisor feels that a verbal reprimand will fail to produce necessary corrective action, he/she can issue a written warning. This unofficial notice should describe exactly what improper actions the employee is engaging in, what penalty might result if these actions continue, and outline positive corrective steps.

10. LETTER OF REPRIMAND. A written letter of reprimand is a letter or memorandum issued by a management official for the purpose of correcting an employee's conduct, attitude, work habits, or other factors which have a relationship to his employment, and to maintain the efficiency, discipline, and moral of the work force. A letter of reprimand is most effective when it is constructive and remedies or prevents the recurrence of an employee's shortcoming, fault or offense. (It should not be confused with the written warning discussed in paragraph c). This type of disciplinary action should be used when the situation or offense is serious and warrants more than an informal correction, or in the case of repeated infractions of a minor nature.

11. LETTERS OF REPRIMAND. The following sample letter of reprimand may be used for unit employees.

Date:

Name of Employee:

Address:

Dear (name):

This is notice that you are officially reprimanded for (offense). (The offense must be described in sufficient detail so that the employee will fully understand the violation, infraction, or other action or omission for which he/she is being reprimanded.) The circumstances which make this reprimand necessary were discussed with you by me (or other individual) on (date).

You are advised that I propose to have this official reprimand filed in your official personnel folder for (no more than 2 years). Any future occurrences may result in more severe disciplinary measures.

You may call upon me for assistance which you may need to help you overcome this deficiency and avoid future recurrence of the deficiency.

You may reply to this reprimand personally, in writing, or both to me or to Mr./Ms. (name, address), whom I have designated to receive your reply and you may submit reasons why this reprimand should not be effected. You will be allowed 15 calendar days from the date you receive this letter to submit your reply.

You are assured that your reply will be given consideration. If I determine that the reprimand is sustained, you will be so informed and your reply will be filed in your official personnel folder, together with the reprimand. In the event I decide that this reprimand should not be issued, you will be informed and this letter and the documents related to the particular matter will not be filed in your official personnel folder.

If you do not reply to this letter within 15 calendar days from the day of receipt, it shall be placed in your official personnel folder without further consideration.

If I decide to sustain this reprimand, and if you contend that it violates Article 10 of the NATCA/FAA agreement, you may file a grievance under Article 9, Section 8 of the agreement. The written grievance will be processed beginning with Step 2 of the grievance procedure.

(signed) _____

Note: If the reprimand is sustained, the written notification to the employee should include the following:

If you are dissatisfied with my decision to place this letter of reprimand in your official personnel folder and if you contend that it will violate Article 10, you may file a grievance under

Article 9 of the NATCA/FAA agreement. In this event, you must submit your written grievance to the air traffic manager, (name, address) within 20 calendar days after you receive this notice of decision. The grievance must be filed in accordance with Article 9, Section 8, of the agreement. The written grievance will be processed beginning with Step 2 of the grievance procedure.

12. SUSPENSION OF 14 DAYS OR LESS.

a. The following sample letter to PROPOSE actions covered by this paragraph may be used for unit employees.

Date:

Name of Employee:

Address:

Dear (name):

I propose to suspend you for 2 days from your position of (title, series, grade and salary, facility and location) for the reason and specification listed below:

Reason (Specific reason)

Specification (Specific instance that supports the reason)

(List additional reasons and specifications as appropriate)

You may reply to these reasons to me personally, in writing, or both and furnish affidavits and other documentary evidence in support of your answer within 15 calendar days from the date you receive this letter. In making a response, you have the right to be represented by an attorney or other representative and the right to review the material relied on to support this proposed suspension. You may review this material at (location, address).

As soon as possible after your reply is received, or after the expiration of the 15-day limit if you do not reply, a written decision will be issued to you.

(signed) _____
Authorized Deciding Official
Title
Organization

b. The following sample letter to DECIDE actions covered by this paragraph may be used for unit employees.

Date:

Name of Employee:

Address:

Dear (name):

My letter of (date) informed you of a proposal to suspend you for 2 days because of (reason). I have considered the information you presented in your letter of (date) and in your oral reply of (date). I find, however, that the reason listed in the letter is fully supported by the facts and warrants your suspension to promote the efficiency of the service. Accordingly, it is my decision that you be suspended for 2 days beginning (date).

If you contend that the suspension violates Article 10, you may file a grievance under Article 9 of the NATCA/FAA agreement. The grievance must be submitted in writing to the air traffic manager, (name, address) no later than 20 calendar days after the effective date of the suspension. It must be filed in accordance with Article 9, Section 8, of the agreement. The written grievance will be processed beginning with Step 2 of the negotiated grievance procedure.

(signed) _____
Authorized Deciding Official
Title
Organization

13. REMOVALS OR REDUCTIONS IN GRADE BASED ON REASONS OTHER THAN UNACCEPTABLE PERFORMANCE, REDUCTIONS IN PAY, SUSPENSIONS OF MORE THAN 14 DAYS, AND FURLOUGHS FOR 30 DAYS OR LESS.

a. The following sample letter to PROPOSE actions covered by this paragraph may be used for unit employees.

Date:

Name of Employee:

Address:

Dear (name):

I propose to remove you from your position of (title, series, grade and salary, facility and location) not earlier than 30 days from the date you receive this notice. The reasons for the proposed action are:

Reason No. 1 (Specific reason)

Specification No. 1 (Specific instance that supports the reason)

Specification No. 2 (Specific instance that supports the reason)

Reason No. 2 (Specific reason)

Specification No. 1 (Specific instance that supports the reason)

(list additional reasons and specifications as appropriate)

You may reply to these reasons to me personally, in writing, or both and furnish affidavits and other documentary evidence in support of your answer within 15 calendar days from the date you receive this letter. In making a response, you have the right to be represented by an attorney or other representative and the right to review the material relied on to support this proposed action. You may review this material at (location, address). You and your representative at the facility shall be granted a reasonable amount of official time, provided you are otherwise in a duty status, of up to 16 hours, to prepare and present a reply to this proposed action. As soon as possible after your reply is received, or after the expiration of the 15-day limit if you do not reply, a written decision will be issued to you.

(signed) _____
Authorized Deciding Official
Title
Organization

b. The following sample letter to DECIDE actions covered by this paragraph may be used for unit employees.

Date:

Name of Employee:

Address:

Dear (name):

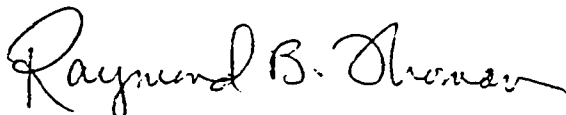
My letter of (date) informed you of a proposal to remove you from your position of (title, series, grade and salary, facility and location). I have considered your written submission of (date) and your oral reply of (date). I find, however, that all the reasons listed in my letter are fully supported by the facts and warrant your removal to promote the efficiency of the service. Accordingly, it is my decision that you be removed effective (date).

You have the right to appeal this action to the Merit Systems Protection Board (MSPB), or to file a grievance under the NATCA/FAA agreement, but not to do both. If you elect to appeal this action, you must submit an appeal to the Chief Appeals Officer, Merit Systems Protection Board (address of local MSPB field office) during the period beginning with the day after the effective date of the removal until not later than 20 calendar days after the effective date. Enclosed is a form which you may use in submitting an appeal. Also enclosed is a copy of MSPB regulations.

If, on the other hand, you contend that the action violates Article 10, you may file a grievance under Article 9 of the agreement. The grievance must be submitted in writing to the air traffic manager (name, address) no later than 20 calendar days after the effective date of the removal. It must be filed in accordance with Article 9, Section 8, of the agreement and processed beginning with Step 2 of the negotiated grievance procedure.

(signed) _____

Authorized Deciding Official
Title
Organization



RAYMOND B. THOMAN
Acting Director of Labor and
Employee Relations